

§ 10.67 Evidence.

(a) *Admissibility.* Relevant, material and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable and unduly repetitious evidence shall be excluded.

(b) *Official notice.* (1) Official notice may be taken of

(i) Any material fact which might be judicially noticed by a district court of the United States; or

(ii) Any matter in the public official records of the Commission.

(2) If official notice is requested or taken of a material fact, any party, upon timely request, shall be afforded an opportunity to establish the contrary.

(c) *Objections.* A party shall timely and briefly state the grounds relied upon for any objection made to the introduction of evidence. If a party has had no opportunity to object to a ruling at the time it is made, he shall not thereafter be prejudiced by the absence of an objection.

(d) *Exceptions.* Formal exception to an adverse ruling is not required. It shall be sufficient that a party, at the time the ruling is sought or entered, makes known to the Administrative Law Judge the action he wishes the Administrative Law Judge to take or his objection to the action being taken and his grounds therefor.

(e) *Excluded evidence.* When an objection to a question propounded to a witness is sustained, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness, or the Administrative Law Judge may, in his discretion, receive the evidence in full. Rejected exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

(f) *Affidavits.* Affidavits may be admitted by the Administrative Law Judge only if the evidence is otherwise admissible and the parties agree that affidavits may be used.

(g) *Official government records.* An official government record or any entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record or by his deputy, ac-

companied by a certificate that such officer has custody. If the office in which the record is kept is within the United States the certificate may be made by a judge of a court of record in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by any officer in the Foreign Service of the United States stationed in the foreign state or country in which the record is kept and authenticated by the seal of his office. A written statement signed by an officer having custody of an official record or by his deputy, that after diligent search, no record or entry dealing with a specific matter is found to exist, accompanied by a certificate as provided above, is admissible as evidence that the records of his office contain no such record or entry.

(h) *Entries in the regular course of business.* Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, will be admissible as evidence thereof if it shall appear that it was made in the regular course of business by a person who had a duty to report or record it.

§ 10.68 Subpoenas.

(a) *Application for and issuance of subpoenas—*(1) *Application for and issuance of subpoena ad testificandum.* Any party may apply to the Administrative Law Judge for the issuance of a subpoena requiring a person to appear and testify (subpoena ad testificandum) at the hearing. All requests for the issuance of a subpoena ad testificandum shall be submitted in duplicate and in writing and shall be served upon all other parties to the proceeding, unless the request is made on the record at the hearing or the requesting party can demonstrate why, in the interest of fairness or justice, the requirement of a written submission or service on one or more of the other parties is not appropriate. A subpoena ad testificandum shall be issued upon a showing by the requesting party of the general relevance of the testimony being sought and the tender of an original and two